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**IN THE HIGH COURT OF CHHATTISGARH ATBILASPUR**

**F.A. NO. 13 /2007.**

**APPELLANT/ OBJECTOR** : Smt. Mehrun Nisha
W/o. Mujibdad Khan,
Aged about – 45 years
R/o.- Juni Hatri, Rajnandgaon
Distt.- Rajnandgaon (C.G.)

**VERSUS**

**RESPONDENTS**

1. State Bank of India
Through – Branch Manage,
Collectorate Branch, Rajnandgaon
Distt.- Rajnandgaon (C.G.)

2. Ahmad Bhai S/o. Gafoor Mistri
Aged about – 53 years,
Pro.- Ahmad Trunk Factory, Juni
Hatri, Rajnandgaon (C.G.)

3. Salim Akhtar Ahmad Bhai
Aged about- 35 years,
Through :- Ahmad Trunk Factory,
Juni Hatri, Rajnandgaon (C.G.)

P.R. No. 197/07
Presented by Shri Rajesh Maheshwari
dated 16/11/07

**FIRST CIVIL APPEAL UNDER SECTION 96 AND ORDER 21 RULE 58 (4) OF CIVIL PROCEDURE CODE**

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ..... F.A. No. 13/ **सन्** 2007

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

25/01/2007 :

Shri Anup Majumdar, counsel for the appellant.

Heard.

Brief facts are that in Civil Suit No. 6-B/1994 money decree was passed in favour of the State Bank of India, Rajnandgaon. In execution of the decree 239 sq. meters of land situated in Juni Hatri sheet No. 48-A, plot No.232 and 233 was attached and put to auction. The appellant raised an objection that out of the land attached in execution of the decree she was the owner of 45 sq. meters of land which should be excluded from attachment and auction. The learned First Additional District Judge, Rajnandgaon on 26-09-2005 ordered that 45 sq. meters of land owned by the objector Mehrun Nisha be excluded from the attachment and auction. This order attained finality. Despite this, vide order dated 22-12-2006 the executing Court again subjected the land owned by the appellant herein to auction proceedings. The appellant/objector gave an undertaking before the executing Court that she was willing to pay the entire decretal amount and to purchase the remaining 194 sq. meters of land in the auction proceedings. However, the said prayer was turned down.

In view of the aforesaid facts and circumstances, this appeal is allowed without notice to the respondents. The impugned order dated 22-12-2006 subjecting the land in area 45 sq. meters out of total area of plot No. 232 and 233 i.e. 239 sq. meters being contrary to law is set-aside. The executing Court shall exclude 45 sq. meters of land owned by the objector – Mehrun Nisha which was already excluded from attachment vide order dated 26-09-2005 from the auction proceedings. The

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(41)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ....F.A. No. 13/ **सन् 2007**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक व आदेश क्रमांक | हस्ताक्षर सहित आदेश —2— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| Tumane | appellant/objector is at liberty to make a fresh prayer before the executing Court for depositing the entire decretal amount and shall also be permitted to bid in the auction proceedings.<br><br>In view of above, M.(C).P. No. 137/2007 for grant of stay also stands disposed of.<br><br>**Sd/-**<br>**Dilip Raosaheb Deshmukh**<br>**Judge** | |

P.T.O.

31/12/07